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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 200615-0159]

RIN 0648-BJ83

**Fisheries Off West Coast States; Emergency Action to Temporarily Remove
Seasonal Processing Limitations for Pacific Whiting Motherships and Catcher-
Processors**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: This emergency rule temporarily allows at-sea Pacific whiting processing platforms to operate as both a mothership and a catcher-processor during the 2020 Pacific whiting fishery. This action is necessary to ensure catcher vessels in the mothership cooperative sector are able to fully harvest sector allocations. Emergency measures under this rule will allow catcher-processors to operate as motherships later in the year, and replace mothership processing platforms that have chosen not to operate in the cooperative in response to high economic uncertainty in 2020.

DATES: Effective June 19, 2020, until December 16, 2020. Comments must be submitted by July 19, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2020-0088 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2020-0088, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Barry Thom, c/o Colin Sayre, Sustainable Fisheries Division, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic Access

This emergency rule is accessible via the Internet at the Office of the Federal Register Web site at <https://www.federalregister.gov>. Background information and documents are available at the NMFS West Coast Region Web site at:

<http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html> and at the

Pacific Fishery Management Council's website at

<http://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development/>.

FOR FURTHER INFORMATION CONTACT: Colin Sayre, phone: 206-526-4656, or e-mail: *colin.sayre@noaa.gov*.

SUPPLEMENTARY INFORMATION: On March 31, 2020, a company holding one of the mothership (MS) permits in the at-sea Pacific whiting fishery announced that because of new, unforeseen health, safety, and economic risks, it would not commit a processing platform to the MS sector for the 2020 Pacific whiting season, and would instead operate all of its eligible processing platforms in the Pacific whiting catcher-processor (C/P) sector. The Pacific Coast Groundfish Fishery Management Plan (FMP) prohibits processing platforms in the at-sea Pacific whiting fishery from operating as both an MS and C/P during the same calendar year. Some processing platforms are capable of both harvesting and processing catch at-sea, while others are built solely to process catch delivered by other vessels. Because of this, some processing platforms are able to switch between the C/P and MS sectors, while other platforms are not. To help ensure market stability in the separate sectors, the current rule does not allow processing platforms to switch between the MS and C/P sectors in a single calendar year. Therefore, the decision to operate processing platforms as a C/P in response to the new and unforeseen risks would prevent them from operating as a MS for the remainder of the 2020 fishing year. Without additional rulemaking action to allow these processing platforms to switch to the MS sector, three catcher vessels would lose their MS because the processing platform would be required to commit to operating as a C/P for the remainder of the 2020 fishing year. Losing the MS processing platform would prevent these catcher vessels from harvesting their 2020 Pacific whiting allocations, leaving unharvested about 25 percent of the MS sector Pacific whiting allocation, worth an estimated \$5 million. The remaining

processing companies participating in the MS cooperative do not possess the capacity to receive deliveries from the displaced catcher vessels for the 2020 Pacific whiting season.

On April 8, 2020, industry members from the MS cooperative submitted a letter to the Pacific Fishery Management Council (Council) requesting action to address this issue. On April 10, 2020, the Council voted to request that NMFS initiate an emergency action to temporarily allow any eligible MS and C/P to operate as both types of processing platform during the 2020 Pacific whiting season, instead of opting at the beginning of the fishing season to operate as one or the other for the year. This emergency action would allow at-sea Pacific whiting processing platforms to switch operations for 180 days after publication.

Justification for Emergency Action

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of Commerce to implement emergency regulations to address fishery emergencies. NMFS policy guidelines for the use of emergency rules define criteria for determining whether an emergency exists under section 305(c) of the Magnuson-Stevens Act (62 FR 44451; August 21, 1997). These criteria limit emergency management actions to “recent unforeseen events or recently discovered circumstances” that present serious management problems in the fishery when the benefits of an emergency action outweigh the benefits of the normal rulemaking process.

Maintaining the prohibition on processing platforms operating as both a C/P and MS in the same calendar year would have serious economic impacts within the 2020 Pacific whiting season by limiting catcher vessel operations without providing the benefit

of long-term competitive stability between the MS and C/P sectors. The prohibition on processing platforms operating as both an MS and C/P would place both sectors at an economic disadvantage by limiting the operational flexibility of the at-sea sectors to respond to recent unforeseen circumstances. This emergency action would allow a processing platform to operate as both an MS or a C/P in the same year, depending on the processing needs of the at-sea Pacific whiting sectors. Under these emergency measures, temporarily lifting the restriction on MS and C/P operations would increase the likelihood that MS catcher vessels have markets to deliver catch to throughout the 2020 fishing year. The operational flexibility provided in this emergency action would prevent significant direct economic loss to at-sea whiting fishery participants and fishing communities. These measures will allow at least three catcher vessels impacted by unforeseen circumstances to harvest MS sector Pacific whiting allocations and provide catch revenue to the respective vessel crews. In the event that additional processing platforms cannot commit to taking deliveries from catcher vessels for the remainder of the 2020 Pacific whiting season (due to changes in business plans or because a processing platform is rendered inoperable, for example) this emergency rule may provide additional harvesting and processing opportunities for at-sea Pacific whiting fishery participants.

In light of this information, NMFS finds that an emergency exists, and regulations are necessary to address the emergency.

Emergency Measures

This emergency action removes restrictions prohibiting an at-sea Pacific whiting processing platform from operating as an MS or C/P in the same calendar year, effective June 19, 2020. This action temporarily (for 180 days) allows a processing platform to

operate as both an MS and C/P in the same calendar year, but not on the same trip.

Owners of processing platforms intended to be switched between C/P and MS operations during the 2020 Pacific whiting season must follow this procedure:

1) *Submit a request to register for both processing permits.* The vessel may be registered under both an MS permit and a C/P endorsed permit simultaneously for the duration of the emergency rule. The owner of a processing platform currently registered under a C/P endorsed permit may also operate as an MS by submitting a request to NMFS Permits to register the processing platform under a valid MS permit per regulations in 50 CFR 660.25(b). The owner of a processing platform currently registered under an MS permit may also operate as a C/P by submitting a request to NMFS Permits to register the processing platform under a valid C/P endorsed permit per regulations in 50 CFR 660.25(b).

2) *Submit a notification of a material change to coop agreement within 7 days.* To operate in the MS fishery (*i.e.*, receive deliveries of catch from MS catcher vessels and process 2020 MS sector allocations at-sea) the vessel must be included in the MS coop agreement. To operate in the C/P fishery (*i.e.*, catch and process 2020 C/P sector allocations at-sea) the vessel must be included in the C/P coop agreement. Including a new vessel in either the MS or C/P coop agreement constitutes a material change to the coop agreement. Within 7 calendar days of the new processing platform operating for the first time in either the 2020 MS coop fishery or the 2020 C/P coop fishery, the respective coop manager must notify NMFS in writing of such change to the coop agreement as required in regulations at 50 CFR 660.150 (d)(1)(iii)(B)(4) and 50 CFR 660.160(d)(1)(iii)(B)(4) .

3) *Submit a revised coop agreement within 30 days of material change to the coop agreement.* Within 30 days of a new vessel participating in a coop fishery, the MS or C/P coop manager must submit a revised coop agreement to NMFS that lists all vessels and/or processing platforms operating in the respective coop and includes the new processing platform, along with a letter describing the change to the coop agreement, as required in regulations at 50 CFR 660.150 (d)(1)(iii)(B)(4) and 50 CFR 660.160(d)(1)(iii)(B)(4)

4) *Change vessel declaration before each fishing trip.* For each trip, the vessel must update its vessel monitoring system (VMS) declaration to reflect its activity for that trip prior to departure as specified in existing groundfish regulations at 50 CFR 660.13(d)(4)(iv)(A). The declaration is binding for the duration of the trip and may not be changed until completion of the trip. A processing platform must submit one of the following declarations: a) Limited entry midwater trawl, Pacific whiting catcher/processor sector; or b) Limited entry midwater trawl, Pacific whiting mothership sector (mothership).

Renewal of Emergency Regulations

The Magnuson-Stevens Act limits NMFS's emergency action authority to an initial period of 180 days, with a potential extension up to an additional 186 days, if warranted. The public has an opportunity to comment on the initial emergency action (see **ADDRESSES**). After considering public comments on this emergency rule, NMFS may renew the emergency regulation in December 2020 to provide at-sea Pacific whiting vessels the flexibility to switch between operating as an MS or C/P through December 31, 2020.

Classification

The NMFS Assistant Administrator has determined that this emergency rule is consistent with the Pacific Coast Groundfish FMP, section 305(c) and other provisions of the Magnuson-Stevens Act, the Administrative Procedure Act (APA), and other applicable law. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries finds good cause to waive prior notice and opportunity for public comment because it would be impracticable and contrary to the public interest. This emergency action was recommended by the Council following a letter and comments from members of the public representing the at-sea whiting industry during the March 2020 Council meeting. Providing prior notice through proposed rulemaking and public comment period in the normal rulemaking process would be counter to public interest by delaying implementation of emergency measures intended to provide relief for a time sensitive management problem. The at-sea industry develops extensive plans each year for the Pacific whiting season, and implementing this action as soon as possible maximizes the time available for the at-sea industry to adjust business plans for the year. For the reasons outlined above, NMFS finds it impracticable and contrary to the public interest to provide prior notice and opportunity to comment on these emergency measures.

Additionally, this rule is exempt from the 30-day delayed effectiveness provision of the APA under 5 U.S.C. 553(d)(1) because it relieves a restriction that would place mothership dependent catcher-vessels at an economic disadvantage in the 2020 Pacific whiting fishery. Waiving the 30-day delayed effectiveness for this rule is necessary to allow the at-sea sectors sufficient time to plan operations and maximize flexibility provided by this action. Maintaining the prohibition on vessels operating as both an MS and C/P in the same calendar year would present immediate serious economic impacts

without contributing to the economic goals of the Catch Share Program, at-sea Mothership cooperative or Catch-Processor cooperative. Because this rule alleviates a restriction that would otherwise have serious and unnecessary economic harm on non-groundfish trawl vessels, it is not subject to the 30-day delayed effectiveness provision of the APA.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

This final rule is not an Executive Order 13771 regulatory action because it is not significant under Executive Order 12866.

The Regulatory Flexibility Act does not apply to this emergency rule because the rule is issued without prior notice and opportunity for public comment.

Recordkeeping and Reporting Requirements

This emergency action includes record keeping and reporting requirements previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0573: Expanded Vessel Monitoring System Requirement for the Pacific Groundfish Fishery. For each trip, prior to leaving port a Pacific whiting processing platform must declare whether it will be operating in the MS sector or the C/P sector for that trip. However, this action does not change existing recordkeeping and reporting requirements. Vessels in fisheries off West Coast states must declare through VMS the gear type and sector in which they will participate, including the limited entry midwater trawl and Pacific whiting MS and C/P sectors, as specified in existing groundfish regulations at 50 CFR 660.13(d)(4)(iv)(A). The number of declaration reports the vessel operator is required to submit to NMFS would not change under this action.

Therefore, no entity would be subject new reporting requirements under this emergency action.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: June 16, 2020.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C 7001 *et seq.*

2. In § 660.25, add paragraph (b)(4)(vii)(D) to read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(4) * * *

(vii) * * *

(D) *Emergency rule creating season flexibility on at-sea processing restrictions.*

Effective June 19, 2020, until December 16, 2020, notwithstanding any other section of

these regulations, vessels may be registered to both a limited entry MS permit and limited entry trawl permit with a C/P endorsement during the same calendar year. Vessels registered to both an MS permit and a C/P endorsed permit may operate in both the at-sea MS sector and C/P sector during the same calendar year, but not on the same trip. Prior to leaving port, a vessel registered under both an MS permit and a C/P endorsed permit must declare through VMS the sector in which it will participate for the duration of the trip, as specified at § 660.13(d)(4)(iv)(A).

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3. In § 660.112, add paragraphs (d)(3)(i) and (ii) and (e)(3)(i) and (ii) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(d) * * *

(3) * * *

(i) Effective June 19, 2020, until December 16, 2020, notwithstanding any other section of these regulations, a vessel that was used to fish in the C/P fishery may be used to receive and process catch as mothership in the same calendar year, but not on the same fishing trip.

(ii) [Reserved]

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(e) * * *

(3) * * *

(i) Effective June 19, 2020, until December 16, 2020, notwithstanding any other section of these regulations, catcher-processor vessels and motherships are exempt from this prohibition.

(ii) [Reserved]

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4. In § 660.150, add paragraphs (b)(1)(i)(D), (b)(2)(ii)(B)(I) and (2), (f)(1)(iii), and (f)(2)(i)(A) and (B) to read as follows:

§660.150 Mothership (MS) Coop Program.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(D) Under emergency measures effective June 19, 2020, until December 16, 2020, notwithstanding any other section of these regulations, a vessel may operate as both a mothership and a C/P during the 2020 Pacific whiting primary season, but not on the same fishing trip.

* * * * *

(2) * * *

(ii) * * *

(B) * * *

(I) Under emergency measures effective June 19, 2020, until December 16, 2020, notwithstanding any other section of these regulations, a vessel may operate as both a mothership and C/P during the 2020 Pacific whiting primary season, but not on the same

fishing trip. A vessel registered in the same calendar year to operate under both a limited entry MS permit and limited entry permit with a C/P endorsement must declare prior to leaving port the sector in which it will participate for the duration of the trip, as per declaration requirements specified at § 660.13(d)(4)(iv)(A).

(2) [Reserved]

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(f) * * *

(1) * * *

(iii) Emergency rule creating seasonal flexibility on at-sea processor restrictions. Effective June 19, 2020, until December 16, 2020, notwithstanding any other section of these regulations, vessels may operate as both a mothership and a C/P during the 2020 Pacific whiting primary season, but not on the same fishing trip.

(2) * * *

(i) * * *

(A) Emergency rule creating seasonal flexibility on at-sea processing restrictions. Effective June 19, 2020, until December 16, 2020, a vessel registered to an MS permit is exempt from this declaration and may also operate as a catcher-processor during the 2020 Pacific whiting primary season, even if the permit owner previously declared to operate solely as a mothership.

(B) [Reserved]

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5. In § 660.160, add paragraphs (b)(1)(i)(D), (b)(1)(ii)(A)(I) and (2), (e)(1)(iii)(A) and (B), and (e)(2)(i)(A) and (B) to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(D) Effective June 19, 2020, until December 16, 2020, notwithstanding any other section of these regulations, a vessel may operate as both a mothership and a C/P during the 2020 Pacific whiting primary fishing season, but not on the same fishing trip.

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(ii) * * *

(A) * * *

(I) Under emergency measures effective June 19, 2020, until December 16, 2020, a vessel may operate as both a mothership and C/P during the 2020 Pacific whiting primary season, but not on the same fishing trip. A vessel registered in the same calendar year to operate under both a limited entry MS permit and limited entry permit with a C/P endorsement must declare prior to leaving port the sector in which it will participate for the duration of the trip, as per declaration requirements specified at § 660.13(d)(4)(iv)(A).

(2) [Reserved]

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(e) * * *

(1) * * *

(iii) * * *

(A) Emergency rule creating seasonal flexibility on at-sea processor restrictions. Effective June 19, 2020, until December 16, 2020, notwithstanding any other section of these regulations, vessels may operate as both a mothership and a C/P during the 2020 Pacific whiting primary season, but not on the same fishing trip.

(B) [Reserved]

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(2) * * *

(i) * * *

(A) Emergency rule creating seasonal flexibility on at-sea processing restrictions. Effective June 19, 2020, until December 16, 2020, a vessel registered to a C/P endorsed permit is exempt from this declaration and may also operate as a mothership during the 2020 Pacific whiting primary season, even if the permit owner previously declared to operate solely as a C/P.

(B) [Reserved]

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